117-201

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885

No. 1090.

ANTONIO TUA, PLAINTIFF IN ERROR,

vs.

OLIVER CARRIERE, TESTAMENTARY EXECUTOR OF ANTOINE CARRIERE, DECEASED; EMILIE L. CARRIERE; CHARLES J. CARRIERE; AND J. M. SEIXAS, SYNDIC OF EMILIE L. CARRIERE AND CHARLES J. CARRIERE, INDIVIDUALLY AND AS SURVIVING MEMBERS OF THE FIRM OF A. CARRIERE AND SONS, INTERVENOR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 13, 1885.

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INDEX.

	Original.	Print.
Petition	1	1
Order for attachment	3	2
Bond "	3	2
Writ of attachment	5	3
Marshal's return	6	3
Petition of invention; opposition of J. M. Seixas, syndic	7	4
Order to file petition of intervention	8	5
Answer	9	5
Exception to intervention	10	6
Exhibit X—Petition of Oliver Carriere	11	6
Order to file petition	12	6
Continuance of exception; cause assigned on merits	12	6
Answer to intervention	13	7
Order to amend answer	14	7
Answer to intervention	13	7
Order to amend answer	14	7
Verdict	15	8
Judgment	17	9

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	Original.	Print.
Bill of exception No. 1	18	10
No. 2	20	11
Motion for writ of error	22	12
Bond	23	12
Consent as to disposition of property	24	12
Order on consent	25	13
Bond for writ of error	25	14
Certificate	28	15
Original writ of error	29	15
Citation	30	16
Service of citation	31	16
Opinion	32	17
Assignment of errors	34	18

1 *Petition. Filed August* 28, 1884.

United States Circuit Court, Eastern District of Louisiana.

ANTONIO TUA
vs.
A. CARRIERE & SONS. } No. 10652.

To the hon. the circuit court of the United States for the eastern district of Louisiana:

The petition of Antonio Tua, a citizen of Italy, residing in Palermo, respectfully represents:

That your petitioner is the *bona fide* owner and holder of six several bills of exchange drawn by A. Carriere & Sons, a commercial firm lately doing business in New Orleans, and composed of Antoine Carriere, Emile L. Carriere, and Chas. J. Carriere, all of whom are citizens of Louisiana, for the respective sums of £1,508 0 1 & 594 5 3, & £95 13 0 & 76 11 9 & 32 1 3 & 20 %, making, at the rate of exchange on the 28th day of May, 1884, and 26 day of May, 1884, the dates when said bills were sold, the sum of eleven thousand three hundred and seven $\frac{11}{100}$ dollars.

That said bills of exchange were drawn on Messrs. Baring Bros. & Co., of London, at seventy-five days after date, to the order [of] the New Orleans Fruit Importing Co., and transferred over by them to A. Pirandello, of Messina; Guis Zaccadi, of Messina; Santo Santora, Giovani Crimi, Guiseppe Nunieri, and A. Tua, your petitioner-, all of whom are citizens of Italy.

2 That said bills of exchange were duly transferred over by said payees to your petitioner.

That said bills of exchange were duly presented to the drawees for acceptance, but they refused to accept or become responsible in any manner, and thereupon the said bills were duly protested.

That the drawers are indebted unto your petitioner in the sum of ten per cent. damages for the protest of said bills.

That Antoine Carriere departed this life on the 4th day of June, 1884, testate, and his succession has been duly opened and Olivier Carriere and Emile L. Carriere have been appointed his executors.

That the defendants have mortgaged, assigned, or disposed, or are about to mortgage, assign, or dispose of their property, rights, or credits, or some part thereof, with intent to defraud their creditors or give an unfair preference to some of them.

That they have converted or are about to convert their property into money or evidence of debt with intent to place it beyond the reach of their creditors.

Wherefore petitioner prays that a writ of attachment issue herein directed to the marshal, ordering him to seize and take in his possession the property, goods, and effects of the firm of A. Carriere and Sons, and of Emile L. & Chas. J. Carriere; that said firm be cited and the individual members thereof, Emile L., Chas. J., and Antoine Carriere, thro' his test'y executors, Olivier Carriere and Emile L. Carriere, and, after due proceedings, that judgment be rendered in favor of petitioner and against A. Carriere & Sons and the mem-

bers of said firm *in solido* for the sum of twelve thousand four hundred and thirty-seven $\frac{87}{100}$ dollars, with legal interest from
3 judicial demand and costs, with lien and privilege on the property attached. And petitioner prays for general relief, &c.

(Signed) CHAS. LOUQUE, *Att'y.*

Chas. Louque, being duly sworn, says that he is an attorney-at-law; that his client, Antonio Tua, is absent, and that to the best of his knowledge and belief all the facts and allegations contained in the foregoing petition are true and correct.

(Signed) CHAS. LOUQUE.

Sworn to and subscribed before me, this 21st day of August, 1884.

[SEAL.] (Signed) ALPHONSE PHILLIPS,
Not. Pub.

Order.

Let, as within prayed for, an attachment issue herein on petitioners giving bond according to law.

August 25, 1884.

(Signed) EDWARD C. BILLINGS, *Judge.*

Bond for Attachment. Filed August 28, 1884.

United States Circuit Court, Eastern District of Louisiana.

4 *Bond for Writs of Attachment and Sequestration.*

ANTONIO TUA
vs.
A. CARRIERE & SONS. } No. 10652.

Know all men by these presents that we, Antonio Tua, as principal, and Macheca Bros., as sureties, of the city of New Orleans and State of Louisiana, are held and firmly bound unto E. R. Hunt, clerk of the circuit court of the U. S. for the eastern district of Louisiana, and his successors in said office, in the sum of twelve thousand five hundred dollars, lawful money of the United States of America, for which payment, well and truly to be made to the said clerk or his successors, we bind ourselves *in solido*, and each of our executors, administrators, heirs, and assigns firmly by these presents.

Sealed with our seals, and dated the 28th day of August, 1884.

Whereas the said principal has this day presented a petition to the circuit court of the U. S. for the eastern district of La., praying a writ of attachment to issue against A. Carriere & Sons:

Now, the condition of the above obligation is, that we, the above-bound principal and sureties will, well and truly, pay to the said clerk, or his successors in office, for the benefit of any and all persons interested in said suit, all such damages as may be recovered against us, in case it should be decided that said writ was wrongfully obtained.

(Signed) ANTONIO TUA,
Per CHAS. LOUQUE.
MACHECA BROS.

5 *Writ of Attachment. Issued August* 28, 1884.

United States of America, Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

ANTONIO TUA
vs.
A. CARRIERE & SONS. } No. 10652.

The President of the United States to the marshal of the United States for the eastern district of Louisiana, Greeting:

You are hereby commanded to attach and take into your possession, according to law, the property, rights, and credits of the defendants, A. Carriere & Sons, Emile L. Carriere, and Charles J. Carriere, that may be found within our said district, to satisfy the claim of the plaintiff, Antonia Tua, amounting to the sum of twelve thousand four hundred and thirty-seven $\frac{57}{100}$ dollars, with interest thereon at the rate of five per cent. per annum, from the 28th day of August, until paid, and costs; and to hold the same to satisfy the judgment of the court in the premises.

And of your acts and doings herein that you make due return according to law. Hereof fail not.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 28th day of August, 1884.

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

6 *Marshal's Return. Filed April* 6, 1885.

United States Circuit Court, Eastern District of Louisiana.

ANTONIO TUA
vs.
A. CARRIERE & SONS. } No. 10652.

Rec'd August 29th, 1884, and levied this writ on all and singular the property and effects thereunder seized and in the custody of the U. S. marshal, as seized and set forth in the return made on the writ of attachment issued in suit of J. Vergnorle *vs.* these defendants, No. 10648 of the docket of this hon. court, and other writs issued out of this hon. court. Subsequently this hon. court rendered a judgment setting aside the said seizures and this writ, all of which is fully set forth in the return made as aforesaid, and the said return in all its parts is herein referred to, as well as the notices of seizure, with the return on same hereto annexed for reference. From the decision setting aside the said seizures an appeal to the hon. the Supreme Court of the United States was taken or applied for in this cause.

Ret'd April 2d, 1885.

(Signed) EDW. S. WURBURGER,
D'y U. S. Mar.

7 *Petition of Intervention & Opposition of J. M. Seixas, Syndic.*

United States Circuit Court, Eastern District of Louisiana.

ANTONIO TUA
vs.
A. CARRIERE & SONS. } No. 10652.

To the honorable the circuit court of the United States, fifth circuit and eastern district of Louisiana:

The petition of James M. Seixas, the duly appointed and qualified syndic of the creditors of A. Carriere & Sons, defendants herein, respectfully asks permission of the court to file this his petition of intervention and opposition herein.

Petitioner avers that on the 18th day of July, 1884, the defendants herein, A. Carriere & Sons, made a cession of all their goods, property, rights, and credits to their creditors in the civil district court for the parish of Orleans, that said cession was on the same day duly accepted by said court for said creditors, and petitioner was appointed and qualified as provisional syndic, representing said creditors and said insolvent estate, with full right and title to the possession of the same, all long before the institution of this suit or any proceedings herein.

Petitioner avers that he was subsequently, on the 21st day of August, 1884, elected and qualified as definitive syndic of said creditors and estate.

8 Petitioner avers that in this suit an attachment issued of the 25th day of August, 1884, or thereabouts, and under it the United States marshal, J. R. G. Pitkin, has seized, or claims to have seized, certain property described in his return, a copy of which will be filed, which, under the cession and acceptance of the court above described, and under the appointment of this petitioner as provisional syndic, and his election and qualification as definitive syndic, vested on said creditors and on petitioner, as their representative, with full right and possession of the same, and that said property was not subject to seizure by attachment or any other process from this honorable court; that said United States marshal had and has not the right to seize nor take or maintain possession of said property, and reserving all right to claim against him or his sureties damages for such wrongful seizure.

Petitioner prays that Antonio Tua, plaintiff; A. Carriere & Sons, defendants, and J. R. G. Pitkin, United States marshal of this court, be cited to answer this petition of intervention and opposition, and that after due proceedings the attachment, so far as it relates to this property, may be set aside and quashed; that any and all property seized thereunder be released and delivered to petitioner, and his right, title, and possession of same be recognized and maintained, and petitioner asks for all orders necessary, and for general and equitable relief.

(Signed) BAYNE & DENEGRE,
Atty's for Deft's.

Order.

Let this petition of intervention and opposition be filed.
New Orleans, October 22d, 1884.
(Signed) DON A. PARDEE, *Judge.*

Service accepted Oct. 22d, 1884.
(Signed) CHAS. LOUQUE, *Att'y.*

9 Service accepted for the U. S. marshal, Oct. 22, 1884.
(Signed) J. R. G. PITKIN,
U. S. Marshal.
By E. S. WURZBURGER, *Dy.*

Answer. Filed 24 *Oct.*, 1884.

United States Circuit Court, Eastern District of Louisiana.

ANTONIO TUA
vs.
A. CARRIERE & SONS. } No. 10652.

To the honorable the judges of the United States circuit court, eastern district of Louisiana:

And now come Emile L. Carriere and Charles J. Carriere, surviving partners of the late firm of A. Carriere & Sons, and answer for themselves individually, as well as for their late firm of Carriere & Sons, say:

That they deny all and singular the allegations in said petition contained, except the death of their father, as alleged, and the signatures to said bills of exchange sued on;

And for further answer they aver that they individually, and on behalf of the firm of A. Carriere & Sons, surrende-de all their assets to their creditors, in the civil district court for the parish of Orleans, on the 18th July, 1884, which was accepted by that
10 court, and by their creditors, and the attachment levied herein was made on the property so surrendered in less than 20 days prior to said surrender, and these defendants ask that said attachment be dissolved and the seizure dismissed under section 933 of the Revised Statutes of the United States.

They specially deny that they or their said firm have mortgaged, assigned, or disposed of, or are or were about to mortgage, assign, or dispose of, their property, rights or credits to defraud their creditors or to give an unfair preference to any of them.

They specially deny that they or their said said firm converted or were about to convert their property into money or evidences of debt with intent to place it beyond the reach of their creditors.

Wherefore they pray for judgment in their favor and dissolving the attachment herein issued with all costs, attorneys' fees, and for general relief.

(Signed) SINGLETON, BROWNE & CHOATE,
Att'ys for for Def'ts.

Exception to Intervention. Filed Oct. 25, 1884.

United States Circuit Court, Eastern District of Louisiana.

ANTONIO TUA
vs.
A. CARRIERE & SONS. } No. 10652.

11 To the honorable the circuit court for the United States for the eastern district of Louisiana:

Into court comes the plaintiff, made defendant in this 3d opposition and intervention, who excepts to the same on the ground that J. M. Seixas, the pretended plaintiff in intervention, is not the qualified syndic of A. Carriere & Sons.

Exceptor avers that A. Carriere & Sons have never made a cession of their property, and that no syndic could be appointed unless such cession had previously been made and accepted by the court.

Wherefore exceptor prays that this exception be maintained and the intervention dismissed at intervenor's cost, and for general relief, etc.

(Signed) CHAS. LOUQUE, *Att'y.*

EXHIBIT X.

Petition of Olivier Carriere. Filed Nov. 8, 1884.

United States Circuit Court, Eastern District of Louisiana.

ANTONIO TUA
vs.
A. CARRIERE & SONS. } No. 10652.

To the honorable the circuit court of the United States, fifth circuit, eastern district of Louisiana:

12 The petition of Olivier Carriere respectfully represents that he is the executor of the will of A. Carriere, deceased, and is administering his succession in the civil district court of the parish of Orleans, under appointment confirming him as executor on the — day of June, 1884.

That J. M. Seixas, Esq., as syndic of the creditors of the firm of A. Carriere & Sons, is administering the partnership assets of the firm of A. Carriere & Sons, under a cession made by said firm on the 18th day of July, 1884, and as such is entitled to the possession of all of the assets of said firm and to have the attachment of the same set aside.

Petitioner respectfully joins in the application made by him, and asks that the same may be granted and for all general and equitable relief.

(Signed) E. D. WHITE, *Att'y.*

Order.

Let this petition be filed as prayed for.

New Orleans, November, 8th, 1884.

(Signed) DON A. PARDEE, *Judge.*

Continuance of Exception. Cause Assigned on Merits.

Extract from the Minutes.

United States Circuit Court, Eastern District of Louisiana. November Term, 1884.

13 ANTONIA TUA
vs.
A. CARRIERE & SONS, } No. 10652.

These four cases came on to be heard on the exceptions filed by plaintiff herein.

Charles Louque & Percy Roberts, for plaintiffs.

Bayne and Denegre, for intervenor.

Singleton, Browne & Choate, for defendants.

When the following-named jurors were sworn to well and truly try the issues joined herein:

1, S. Myers; 2, E. Renon; 3, C. Wright, Jr.; 4, L. A. Bourges; 5, S. H. Hutchinson; 6, P. Dobard; 7, O. Cavallier; 8, H. Heideman; 9, W. J. Pierce; 10, R. G. Hulbert; 11, H. Wilson; 12, J. Marcon; and R. G. Hulburt was appointed foreman of the said jury. When, after hearing the argument of counsel, on motion of Charles Louque, Esq., of counsel for mover, and with the permission of the court, the juror, S. Meyers, is withdrawn, the whole panel dismissed from the consideration of the causes, and the exceptions remitted to the merits to be tried therewith on Saturday, the 29th instant, to which day said causes are assigned for trial.

Answer to Intervention. Filed Nov. 25, 1884.

United States Circuit Court, Eastern District of Louisiana.

14 To the hon'l the circuit court for the eastern district of Louisiana:

ANTONIO TUA
vs.
A. CARRIERE & SONS. } No. 10652.

Into court comes the plaintiff, made defendant in the intervention of J. M. Seixas and *al.*, who, reserving for himself all the benefit of the exception heretofore filed, and in obediance to the order of this hon'l court, for answer to said intervention says:

That he denies that said Seixas is the syndic of A. Carriere and Sons; he denies the right of the succession to intervene.

Second. He denies all and singular the allegations contained in said intervention.

Third. He denies that any proceeding in the State court can affect the attachment hereto issued.

Fourth. Plaintiff now avers that the property attached was in the hands of and under the control of this hon'l court, and that said pretended syndic never had any control over the same, and has no right to disturb the possession of this hon'l court.

Fifth. That the attachment hereto issued and the property seized was in the possession of the United States marshal before any proceedings in intervention were ever had.

Wherefore respondent prays that the intervention be dismissed, and for general relief, etc.

("Signed") CHAS. LOUQUE, *Att'y.*

Order to Amend Answer.

Extract from the Minutes. November Term, 1884.

15 United States Circuit Court, Eastern District of Louisiana.

NEW ORLEANS, TUESDAY, *January* 6, 1885.

Court met pursuant to adjournment.

Present: Hon. Don A. Pardee, circuit judge; Edward C. Billings, district judge.

ANTONIO TUA
vs.
A. CARRIEARE & SONS. } No. 10652.

By consent of counsel for the respective parties the defendants, C. J. & E. J. Carriere, through their counsel, Messrs. Singleton, Browne & Choate, are permitted to amend their answers by inserting in them the fact of a *cassis bonorum* that the defendant made on the 19th July, 1884.

Verdict.

Extract from the Minutes. November Term, 1884.

United States Circuit Court, Eastern District of Louisiana.

NEW ORLEANS, FRIDAY, *January* 16, 1885.

Court met pursuant to adjournment.

Present: Hon. Don. A. Pardee, circuit judge; Hon. Edward C. Billings, district judge.

16 ANTONIO TUA
vs.
A. CARRIERE & SONS. } No. 10652.

This cause came on this day to be heard. Present: Charles Louque, attorney for plaintiff; Singleton, Browne & Choate for defendants; Bayne & Denegre, for intervenors, and E. D. White, for the testamentary executor of Antoine Carriere.

When the following-named jurors were sworn to well and truly try the issue joined herein:

1, Peter A. McDonald; 2, Oscar Cavallier; 3, W. J. Peirce; 4, R. G. Hulbert; 5, Hiram Wilson; 6, Joseph Marcou; 7, Louis C. Wiltz; 8, Frank Kennedy; 9, Jessie Fettis; 10, Eugene Renou; 11, James Rivers; 12, Charles Wright, Jr.; and R. G. Hulbert was appointed foreman of the said jury, and after hearing the pladings, evidence,

and counsel, the said jury did then and there, in open court, through their said foreman, render and deliver the following verdict, viz.:

We, the jury, find for plaintiff $12,437.82, as prayed for, and the attachment to be dissolved.

New Orleans, Jan'y 16, 1885.

(Signed) R. G. HULBERT, *Foreman.*

Whereupon it was ordered that the said verdict be recorded, and it is done accordingly.

17 *Judgment.*

Extract from Judgment Book.

Circuit Court of the United States, Eastern District of Louisiana.
November Term, 1684.

NEW ORLEANS, FRIDAY, *January 16th*, 1885.

Coprt met pursuant to adjournment.

Present: Hon. Don A. Pardee, circuit judge; Hon. Edward C. Billings, district judge.

ANTONIO TUA
vs.
A. CARRIERE & SONS. } No. 10652.

This cause came up this day for trial—present: Charles Louque, att'y for plaintiff; Singleton, Browne & Choate for defendants; Bayne & Denegre for intervenors; and E. D. White for the test'y executor of Antoine Carriere, when, after hearing pleadings, evidence, and counsel, considering the verdict of the jury, it is ordered, adjudged, and decreed that judgment be rendered herein in favor of plaintiff and against the defendants, A. Carriere & Sons, Emile L. Carriere, and Chas. T. Carriere, and the succession of A. Carriere *in solido* for the sum of twelve thousand four hundred and thirty-seven $\frac{82}{100}$ dollars, with legal interest from 28th August, 1884, until paid. It is further ordered that the attachment herein issued be dissolved; but, considering that it was first rightfully issued, it is ordered that the syndic pay all costs thereof previous to the property attached being turned over to him, and upon payment of said costs the marshal is hereby directed to turn over the same to said syndic. It is further ordered that the succession of Antoine Carriere be condemned to pay said judgment in due course of administration. It is further
18 ordered that the defendant pay all costs of suit.

Judgment rendered Jan'y 16th, 1885.

Judgment signed Jan'y 21st, 1885.

(Signed) DON A. PARDEE, *Judge.*

Bill of Exception No. 1. Filed Jan'y 30, 1885.

United States Circuit Court, Eastern District of Louisana.

ANTONIO TUA
vs.
A. CARRIERE & SONS. } No. 10652.

Be it remembered that on the 16th day of January, 1885, in open court and on the trial of this cause, evidence being submitted to the jury showing that the firm of A. Carrriere & Sons was composed of Antoine Carriere, Emile Carriere, and Chas. J. Carriere; that Antoine Carriere departed this life on the 4th day of June, 1884, and Olivier Carriere was appointed his test'y executor, and that Emile L. and Ch's J. Carriere, individually, and as surviving members of A. Carriere & Sons, took on the 18th day of July, 1884, the benefits of the insolvent laws of Louisiana, and filed therewith schedules of their individual assets and liabilities and of the firm of A. Carriere & Sons, making the affidavit that said schedules *was* a true one of their assets and their liabilities, said affidavit being sworn to by Ch's J. and Emile L. Carriere; that at the meeting of the creditors
19 J. M. Seixas was appointed and qualified as the syndic of Emile L. and Ch's J. Carriere, individually and as surviving members of the firm of A. Carriere & Sons; that their creditors refused them a discharge to the said Emile L. and Ch's J. Carriere, individually and as surviving members of said firm; that said syndic was appointed prior to the attachment in this case, and that the attachment was levied subsequent to the refusal to discharge the said Emile L. and Ch's J. Carriere, individually and as members of the firm of A. Carriere & Sons; that this attachment was levied on property already in the hands of the marshal by virtue of attachments issued prior to the 18th of July, 1884, and which attachment *were* subsequently dissolved this day, and that the judges charged the jury, and as shown by the whole charge, but more particularly as follows:

"The cession shown in this case is made by E. L. Carriere and Ch's J. Carriere, individually and as surviving partners, and by operation of law carries into the surrender all their individual property and all the property of the firm."

To which specific charge the plaintiff then and there excepted, on the ground that the partnership was a distinct juridical person from the members composing the firm, and that the insolvency of the members was not the insolvency of the firm; that if the firm had ceased to exist on the 4th day of June, 1884, it could not take the benefit of the insolvent laws; but said exceptions were overruled, and plaintiff took the present bill of exceptions, which is signed by the presiding judges to attest the verity of its contents.

New Orleans, Jan'y 16th, 1885.

(Signed). DON A. PARDEE, *Judge.*

20 *Bill of Exception No. 2. Filed Jan'y 30, 1885.*

United States Circuit Court, Eastern District of Louisiana.

ANTONIO TUA
vs.
A. CARRIERE & SONS. } 10652.

Be it remembered that on the 16th day of January, 1885, in open court, and on the trial of this cause, evidence having been offered to the jury proving that the firm of A. Carriere & Sons was composed of A. Carriere, Emile L. Carriere, and Ch's J. Carriere; that on the 4th day of June, 1884, Antoine Carriere departed this life, and Olivier Carriere was appointed and qualified as his testamentary executor in the civil district court of New Orleans, and on the 18th of July Emile L. Carriere and Ch's J. Carriere took the benefits of the insolvent laws, individually and as surviving members of the firm of A. Carriere & Sons, and filed schedules of their individual assets and liabilities, as also of the assets and liabilities of A. Carriere & Sons, and made oath that said schedules were true and correct, as showing their assets and their liabilities, said affidavit being signed by Emile L. and Ch's J. Carriere; that by virtue of attachments issued on the 1st of July, 1884, and previous to their insolvency, the marshal of this court took possession of certain movable effects belonging to the firm of A. Carriere & Sons and to the surviving partners, and said property and effects were still in the hands of the marshal when this writ of attachment was levied on the same, said levy being made on the — day of August, 1884, and subsequent to
21 the surrender of said insolvents in the civil district court, parish of Orleans, and the acceptance of the same for their creditors by said court on the 18th July, 1884, and the appointment of J. M. Seixas as syndic, and subsequent to the death of Antoine Carriere, of said firm, and the opening of his succession in said court, and the mortuary proceedings therein, the qualification of the executor of A. Carriere, and appointment of a liquidator of A. Carriere & Sons, and subsequent to the meeting of creditors which refused the discharge of the said insolvents; said prior attachments were all dissolved this day and the property ordered released to the syndic on the same grounds and for the same reasons as the attachment herein; it appearing, further, that plaintiff was a citizen of Italy and a resident thereof; and whereupon the presiding judges charged the jury.

"That the effect of the cession of Emile L. and Ch's J. Carriere, individually and as surviving members of the firm of A. Carriere & Sons, and proceedings thereunder, was to stay and practically dissolve all attachments then issued against the said surrendering partners, and all property surrendered in the State courts by direct operation of State laws, and in the national court by force of section 933, Revised Statutes."

To which charge the plaintiff excepted on the grounds that the insolvent laws of Louisiana were null and void, having been passed in 1870, when the power of the U. S. Government over bankruptcies

was in full operation; that the insolvent laws were not binding on the plaintiff herein, who was a citizen of Italy and a resident thereof; but said exceptions were overruled, and the plaintiff
22 took this his bill of exception to the said charge, and the presiding judges have signed the same to attest the verity of its contents.

New Orleans, Jan'y 16th, 1885.

(Signed) DON A. PARDEE, *Judge.*

Motion for Writ of Error.

Extract from the Minutes.

United States Circuit Court, Eastern District of Louisiana. November Term, 1884.

NEW ORLEANS, *Friday, January 30th,* 1885.

Court met pursuant to adjournment.

Present: Hon. Don A. Pardee, circuit judge.

ANTONIO TUA
vs.
A. CARRIERE & SONS. } No. 10652.

On motion of Charles Louque, attorney for plaintiff, and on suggesting to the court *that* the plaintiff that there is error in the judgment herein rendered, and that he is aggrieved thereby and desires tot ake a writ of error, to act as a supersedeas, returnable to the hon. the Supreme Court of the United States at Washington.

It is ordered by the court that a writ of error be granted plaintiff herein, returnable to the hon. the Supreme Court at Washington, on the second Monday of October, 1885, on plaintiff giving bond in such sum as the master may report, said writ of error to
23 act as a supersedeas.

It is further ordered that the parties be referred to William Grant, as master, to report the amount of bond to be furnished by plaintiff in error.

Bond. Filed Feb. 17, 1885.

United States Circuit Court, Eastern District of Louisiana.

ANTONIO TUA
vs.
A. CARRIERE & SONS. } No. 10652.

Know all men by these presents that we, James M. Seixas, syndic of the creditors of A. Carriere & Sons, and of the members of said firm, as principal, and Albert Baldwin, as surety, are held and firmly bound unto A. Tua, plaintiff herein, in the sum of five thousand dollars for the faithful performance of the obligations and duties specified in the annexed consent signed by said Tua.

The condition of the above bond is such that if the above-bounden James M. Seixas, syndic, as principal, shall well and truly discharge

all the duties and obligations specified in the agreement signed by A. Tua, which is annexed hereto and made a part hereof, and shall render a perfect account of his actual doings when lawfully required by said plaintiff, A. Tua, then this obligation to be void, or else to remain in full force and virtue.

(Signed) J. M. SEIXAS.
A. BALDWIN.

24 Accepted and approved.
(Signed) CHAS. LOUQUE,
Att'y for A. Tua.

Consent. Filed Feb'y 17th, 1885.

United States Circuit Court, Eastern District of Louisiana.

ANTONIO TUA
vs.
A. CARRIERE & SONS. } No. 10652.

The plaintiff consents that the property seized, as described in the report of William Grant, Esq., special commissioner, shall be delivered to James M. Seixas, syndic of defendants creditors, to be administered by him as he deems best for realizing the largest sum therefor, with power to compromise and to dispose of said assets and claims, the proceeds to be held by him as representing said property, and without prejudice in all other respects to the seizure herein.

Said James M. Sexias, on taking possession of said property and assets above described, will execute his bond with good security in the sum of five thousand dollars to faithfully administer the same, as provided for in this consent, and that the net proceeds realized shall be held and kept separate until the judgment of the court is rendered or otherwise disposed of by consent of parties.

(Signed) CHAS. LOUQUE,
Att'y for Pl'ff.

25 *Order. Filed Feb'y* 17, 1885.

United States Circuit Court, Eastern District of Louisiana.

ANTONIO TUA
vs.
A. CARRIERE & SONS. } No. 10652.

The court considering the consent filed by the plaintiff in this suit and the bond filed by J. M. Seixas, it is ordered that the property seized herein and described in the report made by Wm. Grant, Esq., commissioner, be delivered to James M. Seixas, syndic of the creditors of A. Carriere & Sons, and of the members of said firm, with power to administer, to collect, or dispose of the same, and compromise and settle claims therein described as may be deemed best for the interest of all concerned, and that proceeds realized shall be held until final judgment herein or otherwise disposed of under the consent of the parties.

New Orleans, February 17th, 1885.

(Signed) DON A. PARDEE, *Judge.*

Bond on Writ of Error. Filed February 21st, 1885.

United States Circuit Court, Eastern District of Louisiana.

26 ANTONIO TUA
vs.
A. CARRIERE & SONS. } No. 10652.

Know all men by these presents that we, Antonio Tua, as principal, and Peter Torre and John Macheca, each for two thousand five hundred dollars, as sureties, are held and firmly bound unto A. Carriere & Sons, Olivier Carriere, testamentary executor of Antoine, unto Emile L. Carriere, Ch' J. Carriere, and J. M. Seixas, syndic of E. L. & C. J. Carriere, individually and as surviving members of A. Carriere & Sons, in the full and just sum of five thousand dollars, to be paid to the said obligees, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 14th day of February, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas lately at a circuit court of the United States, fifth judicial district, holding sessions in and for the eastern district of Louisiana, in a suit pending in said circuit court, wherein Antonio Tua, plaintiff, and A. Carriere & Sons & *als.* are defendants, &c., judgment was rendered against the plaintiff on his attachment, defendant and the said Antonio Tua having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said obligees in this obligation, citing and admonishing them to be and appear at the Supreme Court of the United States to be
27 holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Antonio Tua shall prosecute his writ to effect, and answer all damages and cost if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) ANTONIO TUA,
Per CH'S LOUQUE, *Att'y.*
P. TORRE.
JOHN MACHECA.

Sureties approved.
(Signed) BAYNE & DENEGRE.

Bond accepted.
(Signed) DON A. PARDEE, *Judge.*

UNITED STATES OF AMERICA, *District of Louisiana:*

Personally appeared Peter Torre and John Macheca, who, being duly sworn, depose and say that they are the sureties on the within bond, and they reside in New Orleans, Louisiana, and are worth the full sum of five thousand dollars over and above all their debts and liabilities and property exempt from execution.

(Signed) P. TORRE.
JOHN MACHECA.

Subscribed and sworn before me this 21st day of February, 1885.
(Signed) T. McC. HYMAN,
D'y Clerk U. S. Circuit Court, Eastern District of Louisiana.

28 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 27 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Antonio Tua *vs.* A. Carriere & Sons, No. 10652 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 19 day of August, A. D. 1885.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

I, Don A. Pardee, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 19 day of August, A. D. 1885.

DON A. PARDEE, *Judge.*

29 UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Antonio Tua, as plaintiff, and A. Carriere & Sons, Olivier Carriere, test'y ex'r of Antoine Carriere, Emile L. Carriere, Chas. J. Carriere, defendants, J. M. Seixas, syndic, as intervenor, a manifest error hath happened, to the great damage of the said plaintiff, Antoine Tua, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have

the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 30th day of January, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT,
Clerk of the United States Circuit Court for the Eastern District of Louisiana.

[Endorsed:] United States circuit court. No. 10652. Antonio Tua, plaintiff in error, *versus* A. Carriere & Sons, J. M. Seixas, syndic, defendants in error. Writ of error.

30 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Olivier Carriere, testamentary executor of Antoine Carriere, Emile L. Carriere, Charles J. Carriere, and J. M. Seixas, syndic of Emile L. Carriere and Charles J. Carriere, individually and as surviving members of the firm of A. Carriere & Sons, intervenor herein, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Antonio Tua is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said Antonio Tua, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 21st day of February, in the year of our Lord one thousand eight hundred and eighty-five.

DON A. PARDEE, *Judge.*

31 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 10652. Antonio Tua, plaintiff in error, *vs.* A. Carriere & Sons, J. M. Seixas, syndic intervenor, defendants in error. Citation. No. ——. U. S. circuit court, eastern district of Louiana. Filed March 13, 1885. E. R. Hunt, clerk.

Marshal's Return.

Received by the U. S. marshal February 21st, 1885, and I served true duplicates of this the original citation to a writ of error on the

persons within named, and in their respective capacties as within set forth, as intervenors and defendants in error, in the following date and manner, to wit:

Olivier Carriere, testamentary executor of Antoine Carriere, deceased, by delivering the same to him in person, in the city of New Orleans, eastern district of Louisiana, on March 7th, 1885; Emile L. Carriere & Charles J. Carriere, individually and as surviving members of the firm of A. Carriere & Sons, by delivering the same to R. H. Brown, Esq., of the law firm of Singleton, Brown & Choate, attorneys of record, for the said Emile L. Carriere & Charles J. Carriere, in person, in the city of New Orleans, eastern district of Louisiana, on Feb'y 25th, 1885; J. M. Seixas, syndic of Emile L. Carriere and Charles J. Carriere, individually and as surviving members of the firm of A. Carriere & Sons, by delivery [of] the same to him in person, in the city of New Orleans, eastern district of Louisiana, on Feb'y 25th, 1885.

J. R. G. PITKIN,
U. S. Marshal, East. Dist. of La.,
By E. S. CURRY,
D'y U. S. Marshal.

Personally appeared before me, E. S. Curry, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served true duplicates of this the original citation to a writ of error on the persons within named, and in the respective capacities as therein named, as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal.

Subscribed and sworn before me, March 13, 1885.

E. R. HUNT,
Commissioner United States Circuit Court, Eastern District of Louisiana.

32 *Opinion.*

Circuit Court, E. D. Louisiana. March, 1885.

LAFOLLYE and Others *v.* CARRIERE and Others.

PARDEE, *J:*

The partnership of A. Carriere & Sons, after May 31, 1884, was a partnership at will. It was dissolved by the death of A. Carriere on June 4, 1884. On the dissolution the partnership property either went into the hands of the surviving partners or in the hands of the probate court having jurisdiction of A. Carriere's succession, depending on the nature of the proceedings had after the dissolution. So far as the plaintiffs here are concerned, on proper grounds shown, they could have an attachment for their claims against the firm of A. Carriere & Sons to run against the property of the surviving partners and the property of the firm in their possession. The cession shown in this case is made by E. L. Carriere and C. J. Carriere

individually and as surviving partners, and by operation of law carries into the surrender all their individual property and all the property of the firm.

The effect of such cession and proceedings thereon was to stay and practically dissolve all attachments then issued against the said surrendering partners, and all property surrendered, in the State court by the direct operation of State laws, and in the national courts by force of section 933, Rev. St.

The insolvency laws of Louisiana are not unconstitutional, by reason of their having been re-enacted by codification in 1869, while the bankruptcy laws of the United States were in force. The
33 creditor not placed on the bilan of a ceding debtor is not bound by the proceedings in insolvency until he shall be made a party to the cession; but in case of attachment previously issued by a creditor not placed on the *bilan* the creditor is considered as being made a party by a motion made to dissolve the attachment, on the ground of the cession properly pleaded, or by other proper proceedings, whether by answer or intervention, properly pleading the cession.

The effect of these views in the present cases results in giving judgment to plaintiffs for amounts of debt against E. L. and C. J. Carrierre, individually and as surviving partners, in all cases; and in such cases as the executor of A. Carriere is sued against him also, the same to be satisfied in due course of administration, and that all attachments be dissolved. As in our view the attachments were rightfully issued, and are dissolved by reason of subsequent events not imputable to plaintiffs, all costs of attachment should be paid by the syndic intervening before the property attached is surrendered.

Billings, J., concurred.

34 Supreme Court of the United States.

ANTONIO TUA
vs.
OLIVER CARRIERE, Test'y Ex., & *als.* } No. —.

Into this hon. Court comes Antonio Tua, plaintiff in error, who assigns, as error apparent on the face of the record:

1st. That A. Carriere & Sons have never taken the benefits of the insolvent laws of the State of Louisiana.

2d. That the insolvency of some of the individual members of a partnership does not carry with it the insolvency of the firm.

3d. That until the insolvency of the firm *eo nomine* is accepted no attachment against the firm can be dissolved.

4th. That no property or effects attached and in the hands
35 of the marshal could have been surrendered.

5th. That a meeting of the creditors had refused, previous to the attachment, the discharge of the insolvent members of the firm.

6th. That the proceedings in the State court could not divest the possession of the U. S. marshal.

7th. That the insolvent laws of Louisiana having been passed in 1870, during the existence of the bankrupt laws, the same are unconstitutional, null, and void.

Wherefore appellant prays this hon. Court to reverse the judgment appealed from and to render judgment in favor of plaintiff, appellant, as prayed for in the petition, and with costs in both courts & for general relief.

CH'S LOUQUE,
Of Counsel.

Endorsed on cover: E. Louisiana. C. C. U. S. No. 1090. Antonio Tua, plaintiff in error, *vs.* Olivier Carriere, testamentary executor of Antoine Carriere, deceased, Emile L. Carriere, Charles J. Carriere, and J. M. Seixas, syndic of Emile L. Carriere and Charles J. Carriere, individually and as surviving members of the firm of A. Carriere & Sons, intervenor. Filed October 13, 1885.

JAN 4 1886
JAMES H. McKENNEY
CLERK

117-201

SUPREME COURT OF THE UNITED STATES.

No. 1090.

ANTONIO TUA

vs.

A. CARRIERE & SONS.

BRIEF IN BEHALF OF PLAINTIFF IN ERROR.

CHAS. LOUQUE,

of Counsel.

L. GRAHAM & SON, PRINTERS, 161 GRAVIER ST., N. O.

SUPREME COURT OF THE UNITED STATES.

No. 1090.

ANTONIO TUA

vs.

A. CARRIERE & SONS.

BRIEF IN BEHALF OF PLAINTIFF IN ERROR.

Plaintiff brought suit on the 28th of August, 1884, in the Circuit Court for the Eastern District of Louisiana, and attached the property of the defendants on the grounds that they had disposed of their property with intent to defraud their creditors.

This attachment was sued out by virtue of Article 240 of the Louisiana Code of Practice, which reads as follows:

"A creditor may obtain such attachment of the property of his debtor in the following cases:

1st. When such debtor is about leaving permanently the State; * *

2d. When he resides out of the State;

3d. When he conceals himself to avoid being cited and forced to answer the suit intended to be brought against him;

4th. When he has mortgaged, assigned, or disposed of, or is about to mortgage, assign or dispose of his property, rights or credits, or some part thereof, with intent to defraud his creditors or give an unfair preference to some of them;

5th. When he has converted, or is about to convert, his property into money or evidences of debt, with intent to place it beyond the reach of his creditors."

Plaintiff's claim amounts to the sum of $12,437.82. It is alleged in the petition that the defendant firm was composed of three partners, Antoine, Emile and Charles Carrière. That Antoine died on the 4th of June, 1884. The death of this partner, had for effect to dissolve the partnership, as is provided for by Article 2876 of the Louisiana Civil Code, to-wit: "A partnership ends:

1st. By the expiration of the time for which such partnership was entered into;

2d. By the extinction of the thing, or the consummation of the negotiation;

3d. By the death of one of the partners, or by his interdiction;

4th. By his bankruptcy;

5th. By the will of the parties," etc., etc.

It is averred that the succession of Antoine was opened and Olivier Carrière had been appointed his testamentary executor. Citation and judgment were prayed against A. Carrière & Sons and the members of said firm, *in solido*. R., 1.

Emile Carrière and Charles Carrière, two of the defendants, filed the following answer:

"And now come Emile L. Carrière and Charles J. Carrière, surviving partners of the late firm of A. Carrière & Sons, and, answering for themselves individually, as well as for their late firm of A. Carrière & Sons, say:" That they deny all and singular allegations in said petition contained, except the death of their father, as alleged, and the signatures of said bills of exchange sued on.

And for further answer, they aver that they individually and on behalf of the firm of A. Carrière & Sons surrendered all their assets to their creditors, in the Civil District Court, for the Parish of Orleans, on the 18th of July, 1884, which was accepted by that Court and by their creditors, and the attachment levied herein was made on the property so surrendered, in less than twenty days prior to said surrender, and these defendants ask that said attachment be dissolved and seizure dismissed, under Section 933, of the Revised Statutes of the United States. They further specially deny their intention to defraud.

James M. Seixas, *styling himself Syndic of A. Carrière & Sons*, defendants herein, filed his petition of intervention and opposition, alleging that, on the 18th day of July, 1884, the defendants herein, A. Carrière & Sons, made a cession of all their goods, property, rights and credits to their creditors, in the Civil District Court, for the Parish of Orleans.

He averred that he was elected definitive Syndic, on the 21st day of August, 1884, and that the property attached by the marshal was on his schedule, and that he is entitled to the possession thereof. R., 4.

Olivier Carrière, the Testamentary Executor of Antoine Carrière, joined the Syndic in his defence. R., 6.

The plaintiff filed his exception to the Intervention, and denied that J. M. Seixas was the Syndic of A. Carrière & Sons. R., 6.

This exception was remitted to the merits. R., 7.

For answer to the Intervention, plaintiff reserved to himself the benefit of the exception, denied that Seixas was the Syndic of A. Carrière & Sons, denied the allegation of his intervention, denied that the proceedings in the State Court could affect the attachment, and averred that the property attached was in the hands of, and under the control of this Honorable Court, and said pretended Syndic never had any control over the same, and has no right to disturb the possession of this Honorable Court, and that the property seized was in possession of the United States Marshal, before any proceedings in insolvency were ever had. R., 8.

By error in the Record, the word Intervention was substituted for Insolvency, in the said answer.

Under instructions from the Court, the jury rendered a verdict for plaintiff, for the amount prayed; as regards the succession, said judgment was to be paid in due course of administration. The attachment was set aside, "but considering that it was first rightly issued, it is ordered that the Syndic pay all costs thereof, previous to the property attached being turned over to him."

From this judgment the plaintiff brings this cause for review.

Two bills of exception were taken to the charge by the Judge to the jury. These bills recite the facts of the case as shown by the evidence.

Your Honors will notice that J. M. Seixas appears before the Court, only in his capacity of Syndic of *A. Carriere & Sons.* He does not claim as Syndic of Emile nor of Charles Carrière. Therefore if we show that A. Carrière & Sons have not taken the benefit of the insolvent laws; that it was a legal impossibility for a partnership which had already been dissolved by the death of one of its members, to take the benefit of the insolvent laws; in other words that a juridical person which does not exist, can not appear in Court to make a surrender and obtain a discharge, of its debts, then the attachment should be maintained and the petition of intervention dismissed.

The only contest now, actually presented, is whether J. M. Seixas, the pretended Syndic, is entitled to the possession of the effects seized, or whether the Court shall retain its control thereon and subject the same to the judgment herein.

The defendants were guilty of the intention to defraud their creditors, that was proven, admitted by all parties and found as a fact in the judgment which decreed that the attachment was first rightfully issued. R., 9.

Is J. M. Seixas the Syndic of A. Carrière & Sons?

The facts as recited by the bill of exception No. 1. (R. 10,) are that on the 18th day of July, 1884, Emile and Charles Carrière individually

and as surviving members of A. Carrière & Sons, took the benefit of the insolvent laws of Louisiana and filed schedules of their individual assets and liabilities and of the firm of A. Carrière & Sons making the affidavit that said schedules were true statements, of their assets and liabilities; that at the meeting of their creditors J. M. Seixas was appointed and qualified as the Syndic of Emile and Charles Carrière individually and as surviving members of A. Carrière & Sons; that their creditors refused them a discharge and that the attachment was levied on property in the hands of the Marshal which he had attached previous to the 18th of July, 1884. That the Judge charged the Jury:

"The cession shown in this case is made by Emile and Charles Carrière, individually, and as surviving partners, and by operation of law carried into the surrender all their individual property and all the property of the firm."

This charge we consider is entirely erroneous:

First. Because if the firm had been dissolved on the 4th of June, 1884, the surviving members had no power to dispose of the assets which then belonged to them in indivision with the heirs of the deceased partner.

A voluntary cession is as much a transfer from the insolvents to the creditors, as is a sale to a third person.

Second. Because two members of a dissolved partnership can not stand in judgment for the partnership. All the members had to be made parties either as plaintiffs or defendants to recover a debt as well as to be sued. 30 A., 693.

Third. Because, as a matter of fact, the insolvency of the partnership was never accepted by the Court, and J. M. Seixas was never appointed nor qualified as Syndic of A. Carrière & Sons. His election and his qualification were as Syndic of Emile and Charles Carrière individually, and as surviving members of the late partnership. Does it require authorities to show that the partnership is a juridical person entirely distinct from the members composing the firm? So that even if the surviving partners had a right to turn over to the creditors the property of the firm in insolvent proceedings, must they at least take the proper steps so to do.

Insolvent laws are in derogation of common right and must be strictly construed.

Fourth. Because a discharge having been refused to the insolvents, plaintiff was entitled to proceed as if no insolvency had ever taken place.

It seems beyond contradiction that the proper proceedings would have been a liquidation of the firm of A. Carrière & Sons, after its

dissolution on the 4th of June, and the payment to the Syndic of Emile and Charles Carrière of whatever amount accrued to them after liquidation, to be distributed in due course among their creditors. Two members of a firm composed of three persons can not assume the liquidation through their Syndic; they have no right to assume control of all the property of the firm.

Suppose, for one instant, that the deceased member was a man of great wealth, and that his heirs had a desire to retain his interest in the partnership property, and not cause it to be sold, would the surrender of the two surviving members be sufficient, without further formality, to deprive the heirs of the deceased member of their co-ownership in the property, and render them responsible towards the partnership creditors of the whole debts? Such a proposition is contrary to law and common sense.

A partnership can be sued after dissolution. 32 A., 44; McCloskey, Bigley & Co. vs. Wingfield & Bridges; 13 A., 326; 29 A., 141; 2 A., 404; 10 A., 625.

Of course, if our reasoning be correct on this bill, the attachment should not have been dissolved.

We now come to our second bill of exception:

The Judge charged: "That the effect of the cession of Emile and Charles Carriere, individually and as surviving members of the firm of A. Carriere & Sons and proceedings thereunder, was to stay and practically dissolve all attachments then issued against the said surrendering partners, and all property surrendered in the State courts by direct operation of State laws, and in the National courts by force of Section 933, Revised Statutes." R. 11.

Sec. 933. "An attachment of property upon process instituted in any court in the United States, to satisfy such judgment as may be recovered by the plaintiff therein, except in the cases mentioned in the preceding nine sections, shall be dissolved when any contingency occurs by which, according to the laws of the State where said Court is held, such attachment would be dissolved upon like process instituted in the courts of said State, provided that nothing herein contained shall interfere with any priority of the United States in the payment of debts."

In the present instance that section has been interpreted to mean that the Federal court shall release the attachment whenever the defendant shall take the benefit of the State insolvent laws, and shall remit the foreign creditors to the insolvent court for his pro rata distribution.

In other words, that section has been given such a construction as to render binding and effective on citizens of other States, the insolvent laws of Louisiana—a conclusion in utter opposition to the principles enunciated by this Honorable Court as regards the binding effect of the State insolvent laws on citizens of other States. 12 Wheaton, 122–369; Ogden vs. Sanders, 6 Peters, 348; Boyle vs. Zacharie, 2 Kent, 323–324; Story on the Constitution, § 1110.

The Circuit Court for the Eastern District of Louisiana had previously held that even if the debtor had taken the benefit of the insolvent laws previous to the issuance of an attachment by a foreign creditor, that the seizure under the attachment of property over which the syndic had not yet taken possession, was valid. 19 Fed. Reporter, p. 194, Mississippi Mills vs. Ranlett.

So that on this question of the effect of the insolvent laws on attachments issued from the Federal Court at the instance of foreign creditors, this Honorable Court will have occasion to set the Circuit Court right with itself and to settle the matter for the future.

When the Revised Statutes of the United States enacts that attachments in the Federal Court shall be dissolved when any contingency occurs by which like process in the State Court is dissolved, it simply means that there shall not be two ways of administering the law in the same State; but this section was never intended to render valid and binding State insolvent laws on citizens of other States and in cases where the Constitution of the United States expressly reserves to Congress the exclusive right to legislate on questions of bankruptcies.

It has not been the intention of the Constitution of the United States, nor of Congress, in any instance, to subordinate the jurisdiction of the Federal Courts to that of the State Courts. In no instance do we find jurisdiction, once properly acquired in the Federal Court, relinquished to allow the State Court to act.

If the two jurisdictions be concurrent, it has always been held that the court which was first seized of jurisdiction should retain it, and that the other court should remit the parties to it.

The bill recites that the property attached was first seized by the Marshal under prior attachments on the first of July, 1884; that the proceedings for a surrender were had on the eighteenth of July, 1884, full eighteen days after the first seizure; that the meeting of the creditors was held and the discharge was refused. The attachment herein was issued after the refusal of discharge, when the insolvent court had not obtained control of the property attached, and when

there could have been no occasion to remit the parties to the insolvent court.

Therefore this cause does not present one where a prior seizure had been made by the State Court or where the jurisdiction of the two courts was co-ordinate. The Federal Court was first seized of property seized and alone had jurisdiction of the subject matter.

But suppose that we are in error we say that in Louisiana there exists no valid insolvent laws.

The Constitution of the United States provides that the United States shall have the power to pass bankrupt laws, and this Honorable Court has held that whilst this power was not exercised by Congress, it was lawful for the State, to enact insolvent laws. That the moment Congress exercised its power, the State insolvent laws, became inoperative and dormant, as long as the bankrupt laws were in force. You have never decided however, that a State had a right to enact insolvent laws, during the existence of a bankrupt law—and that although the power to enact the law did not exist at the time of its enactment, yet these laws became operative by the repeal of the bankrupt law—such is the case in the present instance.

In 1867 the bankrupt act of the United States was enacted by Congress, and remained operative until 1878. No one will deny that during that period of eleven years, the *sole* power to enact "uniform laws on the subject of bankruptcies, throughout the United States" vested in Congress. No one will deny that State insolvent laws are bankrupt laws.

Story on the Constitution, § 1106, says: "No distinction was ever practically, or even artificially attempted to be made between bankruptcies and insolvencies."

In 1869, the Legislature of the State of Louisiana enacted three laws; acts No. 96, 97 and 98, known respectively as the Revised Statutes of 1869—the Civil Code and the Code of Practice.

This was not a mere codification of laws previously existing and continued in force by the name of Revised Statutes, but it was an enactment of a new statute. It was the making of a new law, and Section 3990 of said law repealed all laws or parts of laws contrary to or in conflict with it, and all laws or parts of laws on the same subject matter.

This act is the only statute in existence on the subject of insolvencies, and it was under it that the proceedings for insolvency were had by the defendants.

It seems exceedingly clear that an act done by a person without capacity is null.

We can understand that an insolvent act passed by a Legislature that had authority so to do, and which became law when it was enacted, might lay dormant and become of force again. But we have never heard of a law which had no force, which was unconstitutional when enacted, become of force and effect afterward. The Legislature was without power, without right to enact that law—it was still-born, and nothing could afterwards galvanize it into life. At that date the State had as much right to coin money as to pass the bankrupt law. Therefore we say that the Judge was wrong in charging the jury that the attachment was stayed and practically dissolved by the insolvency of the defendants, since there were no valid laws in the State of Louisiana to authorize proceedings in insolvency.

If your Honors will examine into the jurisprudence of Louisiana you will find that the attachments previously issued are simply stayed by the insolvencies, and the whole matter transferred to the insolvent Court.

In conclusion, we have shown satisfactorily, we hope, to this Honorable Court, that the two charges objected to were not proper; that a firm which has been dissolved by the death of one of its members can not take benefit of the insolvent laws, but should be liquidated, in the usual mode, by the appointment of a liquidator or receiver, leaving to the surviving members the right to take the benefits of the insolvent laws, individually and as surviving members, of their late firm; it being in such case, the duty of the Receiver to pay over to their Syndic such surplus as may remain in his hands after liquidating the partnership; that the Civil Code of Louisiana especially provides for such cases, and your Honors will find the articles on this subject transcribed in full in the appendix; that this was the proper and only course to be followed in this instance.

That two members of a partnership have no right, without the consent or approval of the third partner, or of his heirs, to put the firm in insolvency, any more than they can, after the dissolution of the partnership, dispose of the partnership property.

That, as a matter of fact, even if the surviving partners had the right to take the benefit of the insolvent laws—they should have done so; that the insolvency shown was one of the two surviving partners, but not of the firm.

That the Syndic does not appear, or claim anything as Syndic, of the surviving members, but he appears only as Syndic of the firm, which could not and has not gone into insolvency.

That the discharge having been refused to the defendants, plaintiff had the right to proceed, after such refusal by attachment, as he did.

That Section 933 of the Revised Statutes of the United States, was intended to prevent contrary decisions in the same State, and to have a uniform jurisprudence, as far as possible, but cannot be so construed as to render binding on citizens of other States, the insolvent laws of a State. That such a construction would be reversing the whole jurisprudence as established by this Honorable Court, and give to the States a right to legislate on the subject of bankruptcies, with effect as to foreign subjects and citizens of other States, and forcing the litigants into the State Courts.

That the Courts of the United States, having once acquired jurisdiction and possession of the property in litigation, cannot be divested thereof, by proceedings in the State Courts.

That the insolvent laws of the State of Louisiana are null and void, having been enacted at a time when all control over the subject of bankruptcies, was *exclusively* vested in the United States.

That the subsequent repeal of the bankrupt law could not have the effect of giving life to a law which was still-born.

Plaintiff in error, therefore prays this Hon. Court to reverse the decree of the lower Court, and to issue directions to that Court to maintain the attachment sued out herein—and he prays for all such relief as the nature of this case seems to require.

Respectfully submitted,

CHAS. LOUQUE,

of Counsel.

APPENDIX.

Civil Code, Title Succession, Article 1138:

If there be a commercial partnership in which the deceased was concerned, the surviving partner, after the portion of the deceased in the partnership effects has been ascertained, and the estimate of it made on the inventory, shall have a right to require that this portion remain with his own, in order that the whole may be disposed of for the common profit in the ordinary course of trade and the proceeds applied, as far as is necessary, to the payment of the partnership debts.

1139. This right cannot be refused the surviving partner, if the succession of the deceased partner is vacant, or if all his heirs are absent and not represented; but the surviving partner is bound to give security to the curator of the vacant succession or absent heirs, to the amount of one-fourth over and above the estimated value of the portion which was coming to the deceased from the partnership property, according to the inventory.

1140. The surviving partner, who has thus obtained possession of the partnership effects, has but one year from the day this administration has been given him to sell those effects according to the usual

course of trade and to settle the partnership concerns. After this time he is bound to render an account of his administration to the curator of the vacant succession or of absent heirs of his deceased partner, and to pay him the part due to the heirs on the settlement of the partnership concerns.

1141. During the time the administration of the surviving partner continues, the curator of the vacant succession or of the absent heirs of the deceased, has a right to demand of him, from time to time, an account of his situation, and to exercise over the partnership affairs the same superintendence which the deceased during his life could have exercised.

1142. The surviving partner, who has thus administered the partnership concerns and liquidated them, has no right to any commission therefor. But lawful and necessary expenses incurred for the advantage of the partnership during this administration are borne by the succession in proportion to the interest of the succession in the partnership.

1143. If any one of the heirs of the deceased partner is present or represented in the State, the surviving partner has no right to retain his part of the partnership property no more than the parts of the other heirs who are absent, if the heir opposes it and accepts the succession purely and simply; unless in the act of partnership it be stipulated that the surviving partner shall be entrusted with the liquidation of the partnership concerns, for in this case such a stipulation must be carried into effect.

1144. Except in the case in which the surviving partner of a commercial house obtains the administration of the partnership property, as is established in the preceding articles, the property which the deceased possessed in common or in partnership with others, must be divided, either in kind or by sale, as the Judge before whom the suit for partition is brought, may order.

FILED.
JAN 4 1886
JAMES H. McKENNEY,
CLERK.

117-201

Supreme Court of the United States.

No. 1090.

ANTOINE TUA, PLAINTIFF IN ERROR,

vs.

OLIVIER CARRIÈRE,

TEST. EX. OF A. CARRIERE, DECEASED, E. L. CARRIERE, CHARLES J. CARRIERE AND J. M. SEIXAS, SYNDIC OF E. L. CARRIERE AND C. J. CARRIERE, INDIVIDUALLY, AND AS SURVIVING MEMBER OF THE FIRM OF A. CARRIERE & SONS, INTERVENORS.

THOS. L. BAYNE.

For Seixas, Syndic, Apellee.

L. GRAHAM & SON, PRINTERS, 101 GRAVIER ST., N. O.

Supreme Court of the United States.

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TEST. EX. OF A. CARRIERE, DECEASED, E. L. CARRIERE, CHARLES J. CARRIERE AND J. M. SEIXAS, SYNDIC OF E. L. CARRIERE AND C. J. CARRIERE, INDIVIDUALLY, AND AS SURVIVING MEMBER OF THE FIRM OF A. CARRIERE & SONS, INTERVENORS.

STATEMENT.

On the 18th of July, 1884, Emile L. Carrière and Charles J. Carrière, surviving members of the firm of A. Carrière & Sons, individually, made a cession of their property to their creditors, in and through the Civil District Court of the Parish of Orleans. The Judge of that Court accepted this cession of property, by a judgment entered on that day. James M. Seixas was appointed by the Court Provisional Syndic of said insolvent estates, and took possession of the same for the creditors under the judgment and order of the Court. The creditors of A. Carrière & Sons and of the members thereof, were summoned and convened before a Notary Public, pursuant to law, to elect a Syndic, and James M. Seixas was elected Syndic, and thus his provisional appointment by the Court was confirmed by the creditors of the insolvents. Antoine Carrière, the other member of the firm of A. Carrière & Sons, had died on the 4th of June and his estate was under administration in the Civil District Court, through Olivier Carrière as Executor, who in this concurred with J. M. Seixas, Syndic, in applying for the dissolution of the attachment, which issued in this case on the 28th of August, 1884, more than a month after the cession of property made by the insolvents in and to the Civil District Court, and more than two months after the death of Antoine Carrière and the opening of his succession in said Civil District Court of the Parish of

Orleans. And after all of said estates had passed into the control and jurisdiction of said Courts and its officers.

Several other writs of attachment in favor of other plaintiffs were issued prior to that of this plaintiff in error, and prior to the cession of property by the insolvents they were all dissolved and the parties acquiesced in the judgment. The plaintiff siezed the same property after the cession and after the Civil District Court had acquired jurisdiction over all of the property of the firm of A. Carrière & Sons, and of each member of said firm individually.

Plaintiff's attachment was dissolved by the Circuit Court, and an order made for the delivery of the property to the Syndic and from this judgment the plaintiff appeals, and assigns as errors several matters, some of which are covered by his bill of exceptions and some are not.

Argument.

In the bill of exceptions, p. 11, of record, it is shown that "on the 18th July, 1884, Emile L. Carrière and Charles J. Carrière took the benefit of the insolvent law, individually and as surviving members of the firm of A. Carrière & Sons, and filed schedules of their individual assets and liabilities, and also of the assets and liabilities of A. Carrières & Sons," and on the same day the Civil District Court accepted the surrender, and James M. Seixas was appointed Syndic of the creditors of said firm of A. Carrière & Sons and of the members thereof. All as provided for by the laws of Louisiana, Sections 1785, 1786, 1790-91-92-93-94-96, Revised Statutes, printed in appendix.

Upon proof of these facts the Court charged the jury: "That the effect of the cession of Emile and Charles J. Carrière, individually and as surviving members of the firm of A. Carrière & Sons and proceedings thereunder, was to stay and practically dissolve all attachments then issued against the said surrendering partners, and all property surrendered in the State Courts by direct operation of State laws; and in the National Courts by force of Section 933 of the Revised Statutes."

The only ground of exception to the charge, it will be seen, was that the insolvent laws of Louisiana were null and void, having been passed in 1870 when the power of the United

States Government was in full operation. It has been often and uniformly decided that these insolvent laws were constitutional and were operative in the absence of a general bankrupt law. Bank of Tenessee vs. Horn, 17 Howard Rep, 159. Crapo vs. Kelly, 16 Wallace Rep., 610; Youley vs. Lavender, 21 Wallace Rep., 279; 14 Howard Rep., 374; 2 Wallace Rep., 216; 3 Peters Rep., 303; 9 Federal Reporter, 900.

This insolvent law was in force in 1884 when these transactions took place, and the bankrupt law had long before been repealed, 33 La. An. Rep. 477

There is nothing to sustain this objection to the charge of the presiding Circuit Judge, and District Judge concurring.

The other bill of exceptions may be considered as embraced in that which we have discussed, the facts proved were that there was a surrender made by Emile L. Carrière and Charles J. Carrière, surviving members of the firm of A. Carrière & Sons of the assets of the firm with schedules embracing all of said assets and liabilities which had been accepted by the Civil District Court in a judgment of a acceptance on the 18th July, 1884, that the estate of A. Carrière, was also under administration in the Civil District Court, and that his Executor recognized the Syndic as administrator of the assets of said firm, and he joined in asking for the dissolution of the attachment and it was shown that said writ of attachment was levied after the cession of property by the insolvents, and the Civil District Court of Louisiana had acquired from defendants jurisdiction of all of their property.

The charge of the Court was: "The cession shown in this case is made by E. L. Carrière and Charles J. Carrière, individually and as surviving partners, and by operation of law carries into the surrender all their individual property and all the property of the firm."

The cession of the property of the firm was made in the Civil District Court, in the Parish of Orleans on the 18th of July, 1884, and the schedules filed embraced all the assets and liabilities of the firm of A. Carrière and Son, and of the idividual members, and the Court found as a fact that the cession embraced the assets of the firm.

This cession thus made on the 18th day of July, 1884, was accepted by the judgment of the Court on that date and the property passed into the control and administration of that Court as completely and effectually as if the members had died and their estates were opened and put under admin-

istration in said Court. Antoine Carrière, one of the members of the firm had died on the 4th day of June and his estate was under administration in the same Court, and that Court had complete jurisdiction over the property of the firm and of each member of the firm, and was not subject to siezure by attachment in any other Court while it was thus under administration in that Court.

The Executor of A. Carrière fully recognized the fact that "J. M. Seixas, was Syndic of the creditors of A. Carrière & Sons, under a cession made by said firm on the 18th of July, 1884." (See his petition, p. 61) Emile and Charles answering for themselves and the firm of A. Carrière & Sons made the same admission. (p. 5.) In Tyler vs. his Creditors, 9 Robinson; 366; the Court says:

"Tyler in his petition, not only makes a surrender individually but as a member of the firm and for the firm, and prays that a meeting of the creditors of both be notified. The cession was accepted by the Judge as prayed for; Price was made a party; and the order for a stay of proceedings appears to apply as well to the creditors of the firm as to the individual creditors. One partner can sell all the movable property of the firm to pay debts, or to get money to use for the common business of the concern. This being true, we see no reason why he cannot make a cession of the goods belonging to it, for the purpose of discharging the same debts. The Civil Code treats of the cession of property in the chapter relating to the mode of extinguishing obligations; and Art. 2166 says, that it is a relinquishment that a debtor makes of all his property to his creditors, when he finds himself unable to pay his debts; and a subsequent article provides, that the Syndic shall sell the property surrendered. Tyler was bound for all the debts of Tyler & Jacks; their property is the common pledge of the creditors; he has, for the firm, surrendered it; Jacks makes no opposition, and the judgment or order of the Judge seems to us conclusive, as long as it stands as it does. If judgment should be given as asked by Price, it would be a clear violation of the order staying all legal proceedings against the person and property of Tyler and of the firm. The creditors of the firm have assembled, with the exception of Price, and accepted what Tyler has offered. The Court has homologated their proceedings without opposition, and we cannot permit one creditor to sell, through the sheriff, the common pledge of all, and indirectly avoid the effect of an

existing decree of the Court." Harris vs. Knox, 9 La., Rep. 230; Judson vs. Lathrop, 6 An., Rep. 587.

The judgment of the Civil District Court accepting the cession of the property cannot be attacked collaterally. Sterling vs. Sterling, 34 La. An. Rep. 1029; 17 An. 88; 14 An. 224; 7 Howard, 324; Bozeman vs. Ramelli, 35 An. 873; 33 An. 305; Crapo vs. Kelly, 16 Wallace, 610.

This judgment was rendered pursuant to the laws of the State of Louisiana, and under those laws passed the property of the insolvents to their creditors, and such a judgment will be accepted by the Supreme Court as in accordance with the laws of the State. Taylor vs. Ypsilanti, 105 U. S., page 72; 2 Bissel, 368; 3 Woods, 377; 16 Wallace, 610.

The effect of a cession of property by the insolvents in the State of Louisiana is to dissolve all writs of attachment, which have not matured into judgments as found and declared by the Circuit Judge. Collins vs. Duffy, 7 An. Rep., 39; 6 An. Rep., 444; 3 Rob., 457; 12 Martin, Rep., 32; 2 Martin, Rep., 89; Code of Practice of Louisiana, 724.

In the present case the writs of attachment were levied long after the adjudication of insolvency in the State Court and the acceptance of the surrender of their property by the Court and there has been no doubt but that in such cases the property could not be seized under attachment any more than that property could be seized which was under administration in a probate Court.

The present plaintiff in error issued his writs of attachment on the 28th of August, 1884, when the debtors had made a cession of their property to all of their creditors alike on the 18th of July, 1884. He caused a constructive seizure to be made of the same property which had been seized under other writs prior to the cession (Marshal's return, p. 3). The other writs were all dissolved under the same ruling as made in this case and at the same time, and all of the plaintiffs acquiesced in the judgments then entered, dissolving the attachments and the expression used in the opinion of the Judge in settling a questionof costs that the attachment was first rightfully issued, referre dto those cases wherein writs had been levied prior to the cession. Civil Code of Louisiana, Art. 2170, Section 1791 of Revised Statutes. See Appendix, Shroeder, Syndics, vs. Nicholson, 2 La. Rep., 350; 6 La. An. Rep., 391; 33 An., 478; 34 An. Rep., 1029; Bank of Tennessee vs. Horn, 17 Howard Rep., 159; 14 Howard, 34; 16 Wallace, 610; 21

Wallace, 279; 3 Woods, 720. The insolvent laws of Louisiana were inherited from France and Spain and were formally enacted in 1817, Laws of Louisiana of 1817, p. 126, embraced in the Revision of the laws in 1855, No. 322, p. 432, and again in Revised Statutes of 1870. In the absence of a general bankrupt law these have been universally accepted as operative, 33 An. Rep. 478; 10 Federal Reporter, 900,

It being true and beyond controversy that the writ of attachment, in this case, would be dissolved in the State Court, the judges of the Circuit and District Court are correct in declaring that under the operation of Section 914, 915 and 933, of the Revised Statutes of the United States, the attachment is dissolved in the Federal Court. 105 U. S., p. 72; 2 Blachford, Rep. 208; 3 Bissel, 370; 2 Paine, 251.

Section 933 provides:

"*Attachments Dissolved in Conformity with State Laws.*—An attachment of property upon process instituted in any Court in the United States, to satisfy such judgment as may be recovered by the plaintiff therein, except in the cases mentioned in the preceding nine sections, shall be dissolved when any contingency occurs by which, according to the laws of the State where said Court is held, such attachment would be dissolved upon like process instituted in the Courts of said State; provided, that nothing herein contained shall interfere with any priority of the United States in the payment of debts."

In the case of Sloane vs. Chinicky, 22 Federal Rep., 215, Mr. Justice Miller declares, that, "It is a well-recognized principle among other things, that a State, if it does not impair the obligation of a contract, may provide for the distribution of the property of the debtor within the limits of the State," and discussing the law of Minnesota, which Judge Nelson had construed in the case of Mather and others vs. Nesbit, 13 Federal Reporter, p. 873, and perhaps in other cases, said, "of the validity of this Statute, both Judge Nelson and myself are perfectly satisfied." In the above case from 13 Federal Reporter, Judge Nelson says: "Have the insolvency proceedings dissolved this attachment? The plaintiffs say the writ is not affected by this act. The first section of the insolvency act authorizes an assignment to be made by a debtor whose property has been seized by attachment, and such assignment is an initiatory step to proceeding under the act. When an assignment is made conforming to this section and perfected, the attachment by the terms of the act is dis-

solved, and the title to the property vests in trust in the assignee. If the attachment had issued from the State Court, it would be dissolved. The plaintiff concedes it, and it is clear that a contingency has arisen which is provided for in Section 933, Rev. St. This law is explicit, and puts attachments in the State and Federal Courts on the same footing. It follows, then, that the attachment in this case is dissolved, and the Marshal is ordered to turn over the property to the assignee on payment of necessary expenses and legal fees."

In the case of Bates et als vs. Davis, 17 Federal Rep., 167, Judges Krekel and McCrary express practically the same views.

In Torrens vs. Hammond, 9 Federal Rep., Judge Morris, in the Circuit Court, District of Maryland, says: "The report of Crapo vs. Kelly shows that neither by the eminent counsel who argued the case, nor by any of the learned justices who expressed their views upon it, was it ever questioned that if the chattel which was the subject of the attachment had been at the date of the assignment within the State of Massachusetts, the title would have passed to the insolvent assignee so that no subsequent attachment could have prevailed against it."

They fully recognize, as all courts must, that the State has power to pass laws regulating the transfer of property; and that such transfers and assignments made in accordance with the laws of the State will be accepted---certainly in a Federal court sitting in said State.

The insolvent law of Louisiana makes no discrimination among creditors of the insolvents, but makes an equal distribution among all their creditors wherever they reside. Such a law is equitable, and has been commended by this Court. Mayer vs. Helman, 91, U. S., 506.

In the present case the attempt is to take under a writ of attachment, property which had not only passed into the jurisdiction and control of the State Court, but which under Section — of the laws of Louisiana had vested in the creditors of the insolvents. The Circuit Court decided that if the attachment was levied before the cession of the property by the insolvents, and a cession was made afterwards, and before judgment by the attachment was dissolved in the State Courts by the cession, it would also be dissolved in the Federal Court. The attachment subsequent to such cession of property should certainly have no force whatever. The insolvent law con-

forms to the equal distribution of debtor's property, which was sought to be obtained in the bankrupt act. In the absence of such an act it is of the highest importance that this equal distribution of the debtor's property should be preserved. We respectfully ask that the judgment may be affirmed.

THOS. L. BAYNE.
For Seixas, Syndic, Apellee.

APPENDIX.

From Revised Statutes of Louisiana of 1870.

Sec. 1784. Any person may make a cession of his property to his creditors, provided the surrender be made *bona fide*, without fraud, and agreeably to the formalities prescribed hereafter.

Sec. 1785. Every debtor who shall wish to make a surrender of his estate to his creditors, shall present his petition for that purpose to any Judge having jurisdiction; which petition shall briefly state the circumstances which oblige him to make a surrender, and conclude with a prayer to be allowed to call a meeting of his creditors, at such time and place as the Court may direct, in order that he may lay before them a statement of his affairs and surrender to them his estate; and, in the meantime, all proceedings against his person and property be stayed.

Sec. 1789. Whenever the Judge shall be convinced that the debtor who wants to surrender his property has complied with all the formalities prescribed, he shall endorse on the schedule that the cession of all property of the insolvent is accepted for the benefit of his creditors, and shall order a meeting of the creditors to be called in the manner and within the time prescribed for respites—Civil Code, Article 3051, *et seq.;* he shall also appoint an attorney to represent the creditors absent or residing out of the State, if there be any mentioned in the schedule; creditors represented in the parish shall be considered as residing therein.

Sec. 1790. When issuing the order for the meeting of the creditors, the Judge shall order that all the proceedings, as well against the person as against the property of the debtor be stayed.

Sec. 1791. From and after such cession and acceptance, all the property of the insolvent debtor mentioned in the schedule, shall be fully vested in his creditors; and the syndic shall take possessisn of, and be entitled to claim and recover all the property, and to administer and sell the same according to law.

Sec. 1792. The Judge shall have power on the application of at least three of the creditors of the insolvent debtor, to appoint a provisional syndic, taken by preference from among the creditors, if any of them offer to accept of the trust, who shall take charge of the estate of the insolvent debtor, and keep the same until a syndic is elected and qualified; the Judge shall require from him a bond, with one or more good and sufficient securities, the amount of which shall be proportioned to the value of the estate delivered up to him.

Sec. 1796. At the meeting of the creditors, after having certified on oath their respective claims to be true and legitimate, they shall proceed to the appointment of a syndic; and the notary public, before whom the meeting is held, shall, before issuing a certificate of election, require from the syndic a bond, with one or more good and sufficient securities, *in solido*, to the satisfaction of the Court; the amount of which bond shall be fixed by a rule adopted relative to curators of vacant successions. Two-thirds of the creditors, in number and amount, may dispense with any security at the meeting, and so express it in the process verbal. The syndic shall always be bound to give security for the amount of the mortgage and privileged claims. Civil Code of Louisiana, Article 2170, "The surrender of property is the relinquishment that a debtor makes of all his property to his creditors when he finds himself unable to pay his debts."

117-201

SUPREME COURT OF THE UNITED STATES.

No. 1090.

ANTONIO TUA

vs.

A. CARRIERE & SONS.

BRIEF IN REPLY TO DEFENDANT'S ARGUMENT.

We desire to call the Court's attention to the fact that the decision cited by the Syndic in the case of Tyler & Jacks, does not apply to this case. There the partnership had not expired and this is the main point of difference between the two cases. As long as a partnership lasts each partner may dispose of the partnership effects, but after its dissolution, the goods belong to each in indivision, and one partner cannot transfer any greater rights than he himself has.

Besides, it appears from this decision that Jacks acquiesced in the proceedings in insolvency, taken by his partner. Here, the executor and heirs of Antoine Carrière did and could not acquiesce, simply because an executor cannot administer property through the Insolvent Court, and because the heirs had only a residuary interest as long as they did not accept the succession, purely and simply, which they never did and were not willing to do, because they would have rendered themselves liable for all the debts of the deceased.

Now if the surviving partners had a right to put the firm in insolvency the question is who represents the deceased in such proceedings?

Another query which must be raised is: who is to obtain the discharge? The executor? The heirs of the deceased who are not parties? The dead man?

There can therefore be no doubt that the decision quoted in 9 R., 366, Tyler vs. Creditor, can have no application to this cause.

The attachment should undoubtedly have been maintained.

Respectfully submitted,

CHAS. LOUQUE,

of Counsel.